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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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8 ONDRE SELTZER, an individual,

CASE NO. 10CV1245 JLS (BLM)

9 vs. Plaintiff,

**ORDER RE: MARCH 1, 2012,
HEARING**

10 HEADS AND TAILS, INC., a California
11 Corporation; ANTHONY LOIACONO,
12 ANTHONY LOIACONO, an individual; and
Does 1 through 10, Inclusive,

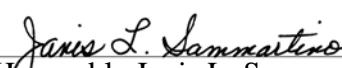
13 Defendant.
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Presently before the Court is Defendants Heads and Tails, Inc., and Anthony Loiacono's (collectively, "Defendants") motion to enforce agreed settlement and dismiss action. (Mot. to Enforce, ECF No. 29) Also before the Court are Plaintiff Ondre Seltzer's ("Seltzer") response in opposition, (Resp. in Opp'n, ECF No. 35), and Defendants' reply in support, (Reply in Supp., ECF No. 28). A hearing on the motion is currently scheduled for March 1, 2012, at 1:30p.m.

The Court finds that in light of the factual issues raised by Seltzer, the motion cannot be decided absent an evidentiary hearing. *See Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987) ("Where material facts concerning the *existence* or *terms* of an agreement to settle are in dispute, the parties must be allowed an evidentiary hearing.") (citing *Russell v. Puget Sound Tug & Barge Co.*, 737 F.2d 1510, 1511 (9th Cir. 1984)). Thus, in lieu of the hearing on Defendants' motion, the Court will hold a status hearing on March 1, 2012, to set an evidentiary hearing for this matter.

26 **IT IS SO ORDERED.**

27 DATED: February 22, 2012

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Honorable Janis L. Sammartino
United States District Judge